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Global Mobility Services: Taxation of International Assignees Country – Kenya

*People and
Organisation*

*Global Mobility
Country Guide
(Folio)*



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Country: Kenya

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Introduction:

International assignees working in Kenya

This folio is intended to assist foreign nationals sent to work in Kenya with their tax planning. It gives a broad background to taxation in Kenya and other important aspects to be considered by a foreign national working in Kenya on a temporary basis.

This folio is not intended to be a comprehensive guide. It merely attempts to give an overview of the issues involved. Accordingly, professional advice should be sought before making important decisions.

Exchange rate \$1 = Kenyan Shillings
100.62 (May 2016).

Last Updated: June 2016

This document was not intended or written to be used, and it cannot be used, for the purpose of avoiding tax penalties that may be imposed on the taxpayer.

Menu

Step 1:

Understanding basic principles

The scope of taxation in Kenya

1. Income tax is a tax levied on income and is charged for each year of income (tax year) upon all the income of a person whether resident or non-resident which accrued in or was derived from Kenya (Kenyan source) or is deemed to be derived from Kenya under the Kenyan Income Tax legislation.

Withholding tax is applied on certain types of income.

2. Other taxes for which individuals may become liable are:
 - Value added tax (VAT);
 - Customs & Excise duties;
 - State pension - National Social Security Fund (NSSF) is payable by both employer and employee at the rate of 5% of salary up to a maximum standard contribution of Kenyan Shillings 200 each per month by each party (total KShs 400). The employee may, however, increase their own contribution by a further Kenya Shillings 200; and
 - National Hospital Insurance Fund (NHIF) payable by the employee at graduated bands up to a maximum of Kenyan Shillings 1,700 per month for income levels of KShs 100,000 and above.

The tax year (year of income)

3. The tax year runs from 1 January to 31 December.

Methods of calculating tax

4. Income tax for individuals is levied on a graduated scale at rates which vary between 10% and 30%. For a schedule of the rates of tax and personal relief please refer to Appendix A.

Husband and wife

5. The liability on a wife's employment income, professional income, or self-employment income is calculated separately but can be assessed and reported together with that of her husband's.

Residence

6. An individual is resident for tax purposes in any particular year if:
 - He/she has a permanent home in Kenya and was present in Kenya for any period in a particular year of income under consideration; or
 - He/she has no permanent home in Kenya but:
 - a. Was present in Kenya for a period or periods amounting in aggregate to 183 days or more in that year of income; or

- b. Was present in Kenya in that year of income and in each of the two preceding years of income for periods averaging more than 122 days in each year of income.

7. A tax resident individual is liable to tax on his/her worldwide employment income, regardless of where this is paid or where the services were rendered. Thus, a resident representative of a foreign company, paid in the foreign country, is liable to Kenyan tax on his/her employment income, even if his/her duties cover countries other than Kenya.

Non-residents

8. A non-resident is taxable on any amount paid to him in respect of any employment with or services rendered to an employer who is resident in Kenya or the permanent establishment of an employer who is not resident.
9. Non-resident individuals are taxed at the individual rates of tax in respect of income from employment except that they are not entitled to personal relief.

Step 2:

Understanding the Kenyan tax system

Taxation of employment income

10. Taxable income includes salaries, wages, bonuses, commissions, director's fees, and any taxable benefits.
11. Pay-As-You-Earn (PAYE) is a method of deducting income tax from salaries and wages and applies to all income from any office or employment (i.e., wages, salaries, bonuses, commissions, director's fees, etc.). PAYE also applies to taxable cash and non-cash benefits.
12. It is the employer's duty to deduct and account for tax under the PAYE system. The penalties for non-compliance are onerous. Annual self-assessment tax returns- The Finance Act 2012 gazetted in February 2016 deleted the proviso which excluded employees with employment income only (which has been taxed correctly through payroll) from filing the annual self-assessment tax returns. Therefore, all employees will be required to file their annual self-assessment tax returns with Kenya Revenue Authority (KRA). The effective date for this change is **1 July 2016** and therefore individuals who were exempted will be expected to resume filing their self-assessment tax returns for the year of income **2016**. The deadline for filing the 2016 self-assessment tax return is **30 June 2014**.

Benefits

13. Non-cash benefits received from employment, except where they do not exceed in aggregate Kenya Shillings 36,000 per annum, are generally taxable at the higher of cost or fair market value.

Share option schemes

14. Where employees are granted stock options from schemes registered with the Commissioner of Income tax, the benefit is taxable at the end of the vesting period (w.e.f 13 June 2008).

For schemes which are not registered with the Commissioner (i.e. unapproved schemes), the rules around the taxation of such stock options are not as developed. The current assumption is that benefits arising from the vesting of such unregistered stock options will be taxable like any other benefits received in kind (i.e. taxable when the benefit accrues to the employee).

Medical insurance

15. Medical insurance coverage or medical services provided to employees or their beneficiaries will not be taxable as long as the following conditions have been met:
 - The insurance service provider is approved by the Kenyan Commissioner of Insurance; and

- The employee is engaged on a full time basis.

Business travel

16. Unsupported business travel allowances granted to an employee who is required to be away from their usual place of work or duty station will be taxable on the employee. However, the first KShs 2,000 per day granted for business travel, or its equivalent in foreign currency need not be supported and can be claimed tax free.

Tax on tax benefit

17. This occurs where an employer agrees to pay their employees emoluments on a net basis, in circumstances such that the employer bears the burden of tax on behalf of the employees. The tax borne by the employer constitutes a benefit and this requires a 'gross up' calculation in order to arrive at the tax due on the benefit enjoyed by the employee.
18. In addition, where the cost and the market value of a benefit provided are difficult to determine (e.g. company owned furniture, communal facilities), the Commissioner may prescribe a taxable value for such benefits. The following benefits are taxable at rates prescribed by the Commissioner of Income Tax:
 - Telephone (Landline & Mobile) – 30% of monthly bills paid by the employer;

- Electricity (communal or from a generator) – taxed at KShs 1,500 per month (KShs 900 per month for agricultural employees required to reside on a farm or plantation);
- Water (communal or from a borehole) - taxed at KShs 500 per month (KShs 200 per month for agricultural employees);
- Use of household furniture – 1% per month of the cost to the employer or cost of hire if furniture is hired;
- Use of company car (taxable benefit is the higher of):
 - Commissioner's fixed monthly rate based on the engine capacity of the car; or
 - 2% per month of the original cost of the vehicle to the employer.
 - Where an employee has restricted use of the company and upon proof by employee, the Commissioner may determine a lower rate of benefit.
 - Where the vehicle is leased by the employer, the taxable benefit is the monthly cost of leasing/hiring incurred by the employer.
- Housing
 - For employees earning more than Kshs 600,000 p.a. the taxable benefit is the actual rent paid by employer on an arm's length basis;
 - For employees earning less than Kshs 600,000 p.a. the

taxable benefit is the higher of 15% of employment emoluments or arm's length rent paid;

- For whole time service directors the benefit is taxed at the higher of (w.e.f 13 June 2008):
 - 15% of employment income excluding the value of those premises;
 - Market rental value and;
 - Rent paid by the employer.
- For agricultural employees, the taxable housing benefit is 10% of gains or profits from employment; and
- In all cases, the taxable benefit is reduced by any contributions made by the employee towards rent and where the housing is occupied for only part of a period.

Where an employer provides board and lodging to employees on its own premises (e.g. the hotel industry), though not legislated, the taxable value of the benefits provided is held in practice to be 20% of gains or profits from employment.

Interest benefit

19. A taxable benefit on an employee arises where he receives a loan by virtue of his employment and either no interest is charged on the loan or the interest charged is less than the rate prescribed. This includes loans to directors from an unregistered pension or provident fund.
20. The prescribed rate will be determined by the Commissioner of Income Tax

based on market lending rates. "Market lending rates" means the average 91-day Treasury bill rate for the previous quarter.

21. For loans granted to employees before 11 June 1998 and the terms of the loan are not varied after that date, the employee is taxed on an interest benefit. This benefit is deemed to be equal to the difference between the prescribed rate and the interest rate actually charged to the employee.
22. For loans which are granted after 11 June 1998, or those provided prior to this date but whose terms are varied after that date, the employer is required to pay Fringe Benefit Tax (FBT). The interest benefit equals the difference between the 91-day Treasury bill rate and the interest actually paid on the loan. The FBT is calculated at the resident corporate tax rate of 30% on the interest benefit and is payable to the Income Tax Department every month. FBT is not a tax-deductible expense for the employer.
23. The 91 day Treasury bill rate is prescribed by the Commissioner of Income Tax and is issued on a quarterly basis.

Retirement benefit schemes

24. An employee can claim relief in respect of his annual contributions to a registered retirement benefit scheme (registered in Kenya). This relief is limited to the lowest of the following:
 - Actual contributions during the year;

- 30% of the employee's pensionable income during the year;
- Kenyan Shillings 240,000 per annum.

Pensionable income generally refers to the employment income including taxable benefits.

Individual retirement benefit schemes

25. Individual Retirement Benefit Schemes cater for individuals who are not members of a registered scheme established by the employer.
26. Contributions to a registered individual scheme are deductible and are limited to the lowest of the following:
 - Actual contributions made;
 - 30% of the individual's pensionable income;
 - Kenyan Shillings 240,000 per annum.

Registered home ownership savings plan (HOSP)

27. Individuals who do not own a permanent house can make tax deductible contributions to an

approved institution towards the down payment or purchase of a house. The deductible contributions are limited to Kenyan Shillings 48,000 per annum for a period of up to ten years. The accumulated funds can be withdrawn tax free to purchase or construct a house. If these funds are not utilized to acquire a house, they can become taxable in the year of withdrawal.

28. Any interest income earned by a depositor on a HOSP deposit of up to a maximum of KShs 3 million is exempt from tax with effect of 1 January 2007.

Mortgage interest deduction

29. Interest paid to borrow for or finance the purchase of premises or the improvement of premises is an allowable deduction against taxable income up to a maximum of Kenyan Shillings 150,000 per annum (with effect from 1 January 2006) providing the premises concerned is occupied by the individual claiming the deduction. A deduction is only allowed in respect of one residence.

Donations

30. Individuals can claim a deduction for donations made to charitable organizations meeting certain criteria or to any other projects that have been approved by the Minister of Finance.

Insurance relief

31. Resident individuals are entitled to insurance relief in respect of premiums paid to local insurance service providers on the following:
 - His or her family's life policy taken on or after 1 January 2003;
 - An education policy with a maturity period of at least 10 years taken on or after 1 January 2003;
 - Health policies taken on or after 1 January 2007 qualify.

The insurance relief is computed at 15% of the combined premiums paid but restricted to KShs 60,000 per annum or KShs 5,000 per month.

Rates of tax

32. Please refer to Appendix A for the applicable tax rates.

Personal reliefs and deductions

33. The 2016 annual amounts are as follows (in Kenyan Shillings):

Personal relief	13,944
Life insurance relief (Max.)	60,000
Mortgage interest deduction (Max.)	150,000
Home Ownership Savings Plan contribution deduction (Max.)	48,000

34. Effective 1 January 2011 gratuity payments or similar payments transferred by an employer directly to a registered pension scheme are tax free up to a limit Kshs 240,000 per annum per individual.



Step 3:

Tax planning opportunities

35. Very few tax planning opportunities exist as far as individuals are concerned. We have indicated some of the more common tax planning opportunities below, for example, meals provided to an employee, where the value of the meals does not exceed the sum of KShs 48,000 per year is tax free.
36. Medical insurance coverage should be provided through an approved insurance provider for exemption on medical costs to apply.
37. Dependants' school fees paid by the employer will be exempt on the employee in cases where the employer is not tax exempt and does not take a corporate tax deduction for the expenses incurred. Employees' own education costs are also tax exempt here the education undertaken is to improve work performance.
38. Expenditure on passages for an expatriate employee employed from outside Kenya, and by concession for his family, between Kenya and his home country is not a taxable benefit on the employee. This includes home leave passages.
39. Aggregate non-cash benefits per employee per annum amounting to KShs 36,000 or less are not taxable.
40. Employee contributions to retirement benefit funds registered in Kenya also qualify as tax deductions of up to KShs 20,000 per month provided that certain conditions are met.

Work permit applications

41. It is the Government's policy that the economy of Kenya should be manned by trained and competent citizens. Entry permits are issued to non-citizens with skills not available in the Kenyan labor market, only on the understanding that effective training programs are undertaken to produce trained citizens within a specified period.



Appendix A:

Tax tables containing rates of taxation

Applicable for tax years ending 31 December 2016

Currency: Kenyan Shillings (KShs) Income Taxes on Individuals.

The annual tax rates are as set out below:

Taxable income over (KShs)	Noto ver (KShs)	Tax (KShs)	Rate (%)
0	121,968	12,196	10%
121,968	236,880	17,237	15%
236,880	351,792	22,982	20%
351,792	466,704	28,728	25%
466,704	And Above	-	30%

Appendix B:

Typical tax computation

Expatriate individual tax computation 2016 (annual calculation)

It is assumed that the individual is a resident of Kenya and is employed by a company that has a permanent establishment in Kenya. The company provides the individual with furnished accommodation and telephone benefits.

Tax computation	KSHs	KSHs
Earned income		
Salary (A)	6,000,000	
Furniture (12% of cost)	120,000	
Telephone (30% of cost)	45,000	
Housing	1,200,000	
Total taxable income		7,365,000
Tax thereon	2,150,633	
Less – personal relief	(13,944)	
Total tax liability (B)		2,136,689
Net take home (A-B)		3,863,311

Note:

1. Cost of furniture assumed to be KShs 1,000,000.
2. Cost of telephone bills assumed to be KShs 150,000 per annum.
3. Monthly rent paid for the employee is KShs 100,000.

Appendix C:

Double-taxation agreements

Countries with which Kenya currently has double-taxation agreements:

Canada	India	Sweden
Denmark	South Africa	United Kingdom
Germany	Norway	Zambia
France		

The East African treaty with Tanzania and Uganda is awaiting conclusion. Other countries with which Kenya has agreed double taxation agreements which are at various stages of approval include;

Iran	Mauritius	Thailand
Kuwait	Italy	Malaysia
Netherlands	Qatar	Seychelles
Singapore	United Arab Emirates	

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